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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,624	11/28/2001	Masao Fukuda	ISHDP165D1	6089

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EXAMINER

HARMON, CHRISTOPHER R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 07/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/996,624

Applicant(s)

FUKUDA ET AL.

Examiner

Christopher R Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/372,009.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukuda (US 5,125,217).

Fukuda discloses a packaging machine comprising a cylindrical chute with means for bending a film S into a tubular form 103; a heater unit 55 for longitudinally sealing overlapping side edges (figure 1); heater driver unit 45, which moves heater unit between retracted and operating positions (figure 8); and an air cylinder 78 for controlling the compressive force of the heater unit 55 and film S. The air pressure is regulated at a specified level. Universal joint 68 allows for a further retracted position of the heater unit 55 from film S; see column 7, lines 10-15.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-2, 4-5, and 19-20 are rejected<sup>1</sup> under 35 U.S.C. 103(a) as being unpatentable over Fukuda (US 5,125,217) in view of Husted (US 4,930,403)

The invention to Fukuda does not disclose a pressure regulating means and controller for controlling the compressive force of the air cylinder, however Husted teaches an air cylinder with a control system for controlling/regulating air pressure to the air cylinder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Husted in the invention of Fukuda to modify the air pressure to the air cylinder for controlling the speed/distance of the travel.

5. Claims 3 and 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda (US 5,125,217).

Fukuda discloses "different combinations of motion-communicating and torque-communicating means can be substituted." (column 8, lines 34-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute an additional air cylinder in place of screw axis 59 for assisting in the movement of heater 55.

### ***Response to Arguments***

6. Applicant's arguments filed 6/27/03 have been fully considered but they are not persuasive. Movement of the heater inherently controls the compressive force against the web and the forming structure, which the operator/manufacturer has to consider when setting control limitations for movement of the heater. Furthermore, it is well

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<sup>1</sup> Claims 1, 4, and 5 are alternatively rejected.

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known to adjust pneumatic pressures for controlling movement of pneumatic cylinders.

Additionally, while features of an apparatus may be recited either structurally or

functionally, claims directed towards an apparatus must be distinguished from the prior

art in terms of structure rather than function. See *In re Schreiber*, 128 F.3d 1473-78, 44

USPQ2d 1429-32 (Fed.Cir. 1997) and *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909

F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed.Cir. 1990).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 8-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703- 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ch  
July 8, 2003



EUGENE KIM  
PRIMARY EXAMINER